

REMARKS

The present communication responds to the Office Action dated January 8, 2007. In that Action, the Examiner objected to claims 1-9 and 25-30 under 35 U.S.C. § 103(a). In view of the following remarks, Applicants respectfully request reconsideration and allowance of the pending claims.

Claim Rejections Under 35 U.S.C. § 103

Rejection as obvious over Schumacher

Claims 1 and 25-30 were rejected under 35 U.S.C. § 103(a) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 4,917,238 to Schumacher. Applicants traverse the rejection for at least the following reasons.

Claims 1-9 and 25-30 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,917,328 to Schumacher. Applicants traverse the rejection for at least the following reasons.

Claim 1 is Not Anticipated and is Not Made Obvious by Schumacher

Claim 1, as amended, is directed to a miscarriage kit. The kit comprises, in part, “at least one under pad/bed liner, the under pad/bed liner having a bottom surface and a top surface, wherein the top surface is designed to absorb bodily fluids; ... at least one specimen pan for receiving human tissue; and at least one container for holding fetal remains for legal disposition.”

Schumacher teaches a waste clean up kit for cleaning up body waste such as vomit, blood, feces and the like. *Schumacher, Col. 2, ll. 6-7*. Schumacher does not teach a kit configured for receiving human tissue or holding fetal remains. The Examiner has argued that Schumacher’s waste cleanup kit “is thus capable of being used as a miscarriage kit since a fetus can be thrown away like other types of bodily waste.” *Current Office Action, p. 4, first full paragraph*. Human tissue and fetal remains are not bodily waste and cannot be compared to vomit, blood, feces, and the like. Human tissue, including fetal remains, must be handled in accordance with legal regulations. Specifically, statutes, such as Minnesota Statute 145,1621 for

Disposition of Aborted or Miscarried Fetuses, provide for specific requirements for proper disposition of fetuses. The Examiner's statement that a fetus can be thrown away like other types of bodily waste, thus, is fundamentally flawed.

The Examiner argues that the absorbent containing pouch 60 of Schumacher is equivalent to an under pad/bed liner. The absorbent containing pouch 60 is neither structurally nor equivalently equivalent to an under pad/bed liner:

The package 59 of absorbent material includes a clear flexible pouch 60 having a press locked end 61. The contents of the pouch 60 is a metered amount of an absorbent granular material.

Schumacher, Col. 2, ll. 54-58. It is unclear how anyone skilled in the art could reasonably understand a clear flexible pouch having a press locked end and containing an absorbent granular material to comprise an under pad/bed liner. The plain meaning of the claimed terms is contrary to a pouch containing an absorbent granular material. However, in order to expedite prosecution of the present application, the applicants have amended claim 1 to recite "the under pad/bed liner having a bottom surface and a top surface, wherein the top surface is designed to absorb bodily fluids." The applicants respectfully submit that Schumacher does not disclose, teach, or suggest an under pad/bed liner wherein "the under pad/bed liner having a bottom surface and a top surface, wherein the top surface is designed to absorb bodily fluids," as recited by claim 1, as amended.

Schumacher further fails to disclose, teach, or suggest "at least one container for holding fetal remains for legal disposition," as recited by claim 1, as amended. The Examiner refers to container 64 of Schumacher as comprising such container. The container of 64 is incapable of performing the use of the claimed container:

The contents further include a container in the form of a plastic bottle 64 and cap 65 for containing a metered amount of chlorine solution. The bottle 64 includes a first fill line 66 and a second fill line 67. Preferably, the bottle is prepackaged with a concentrated (5 ¼%) sodium hypochlorite which is filled to fill line 66 ... The sodium hypochlorite is such that the amount of container 64 is selected for an anticipated amount needed for a one time disinfection of an area contaminated by human waste. The second fill line 67 is selected so that the diluted solution comprises 6 to 7

fluid ounces ... For convenience of an operator, a second cap 68 is provided having a pour spout 69 so that an operator can squeeze bottle 64 and direct a stream of disinfectant through spout 69 to a desired area.

Schumacher, Col. 3, ll. 1-25. Schumacher thus teaches a cleaning bottle for dispensing a cleaning agent. Schumacher does not teach a bottle for receiving fetal remains nor for holding the fetal remains for legal disposition such as regulated by statute. The sodium hypochlorite provided in the container of Schumacher, in fact, would be incompatible with the function of containing and preserving fetal remains for legal disposition. Further, it is unclear how anyone skilled in the art could reasonably interpret a cleaning bottle for dispensing a cleaning agent as comprising "at least one container for holding fetal remains for legal disposition," as recited by claim 1, as amended. The applicants thus respectfully assert that Schumacher does not disclose, teach, or suggest such a container.

The applicants respectfully submit that Schumacher fails to disclose, teach, or suggest the miscarriage kit of claim 1, as amended. Claims 25-31, and 33 depend from, and incorporate all the limitations of, claim 1. Accordingly, reconsideration and withdrawal of the rejection of claims 1 and 25-30 are respectfully requested. Allowance of claims 1, 25-31, and 33 is thus respectfully requested.

Rejection as obvious over Schumacher in view of Gordon

Claims 2-9 were rejected under 35 U.S.C. § 103(a) as being obvious over Schumacher in view of U.S. Patent No. 6,434,762 to Gordon. Applicants traverse the rejection for at least the following reasons.

Claim 2 is Not Made Obvious by Schumacher in view of Gordon

Claim 2, as amended, recites a miscarriage kit including "a specimen pan is configured to fit inside the rim of a toilet and further includes an upper rim configured to allow the upper rim to rest atop the toilet rim, wherein the specimen pan is configured to receive human tissue from a miscarriage."

Schumacher teaches that the waste clean up kit includes a scoop 80 and a scraper 90. The Examiner asserts that scoop 80 comprises a specimen pan. In the current rejection, the Examiner states: “Schumacher *does not expressly disclose* the pan is configured to fit inside the rim of a toilet.” *Present Office Action*, p. 6, *emphasis in original*. The applicants respectfully assert that Schumacher does not expressly or implicitly disclose that the scoop is configured to fit inside the rim of a toilet and, in fact, the scoop of Schumacher could not be configured to fit inside the rim of a toilet and still be suitable for its intended purpose:

Next, using disposable gloves 57 and 58, the operator grasps scoop 80 and scraper 91 in opposing hands and scrapes the absorbent and waste material into scoop 80.

Schumacher, Col. 5, ll. 24-26. A scoop configured for grasping in an operators hand for collecting scraped material is not configured for fitting inside the rim of a toilet.

The Examiner further refers to Gordon as teaching a stool/waste collecting apparatus having a receptacle/specimen pan 14. The Examiner states:

One would be motivated to modify the kit of Schumacher with the specimen pan of Gordon to improve anti-contamination of the system since the reference disclose apparati [sic] to dispose bodily waste. Therefore it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the kit, thus providing a specimen pan to fit inside a toilet rim.

Present Office Action, p. 6.

Gordon teaches a stool collecting apparatus for collecting feces. Schumacher teaches a waste cleanup kit for cleaning up body waste such as vomit, blood, feces, and the like. As previously discussed with respect to the rejection of claim 1, collection of human waste cannot properly be equated with collection of human tissue. The applicants first respectfully submit that, thus, there would be no motivation to apply the teachings of either Gordon or Schumacher to a miscarriage kit.

Schumacher teaches a waste cleanup kit for cleaning up wastes that have already contaminated an environment (“For example, in public facilities such as schools and restaurants, public transportation such airplanes and buses as well as daycare centers and other environments,

the need to dispose of human waste (particularly vomit) frequently arises.” *Schumacher, Col. 1, ll. 28-33*). The entirety of *Schumacher* is directed to cleaning up waste from a contaminated site: by spreading absorbent granular material over the waste material, by scooping the absorbent and waste material, by disposing of the absorbent and waste material, by pouring chlorine solution over the spill area, and by wiping the spill area. *Schumacher, Col. 4, ll. 18-44*. There is no suggestion that *Schumacher* is directed to, or could be directed to, collecting waste material as it exits the body. In contrast, *Gordon* is specifically directed collecting feces as it exits the body. The applicants thus next respectfully submit that *Schumacher* and *Gordon* cannot properly be combined.

As may be appreciated by one skilled in the art, human feces exit the body via the anus. In contrast, human tissue from a miscarriage leave the female body through the lower part of the cervix and vagina. Thus, the stool collecting apparatus of *Gordon* provides collection at a different anatomical site that does not coincide with the site for collection of receive human tissue from a miscarriage. Further, forward positioning of the center strip 12 of *Gordon* on the toilet seat to align with the female vagina and cervix would not be sufficient to enable use for receiving human tissue from a miscarriage because the opening 18 and stool receptacle 14 of *Gordon* are insufficient to effectively capture and contain fetal tissue. Accordingly, the applicants next respectfully submit that, even if *Gordon* could be properly combined with *Schumacher*, which, for the reasons discussed above, it could not, such combination still would not make obvious claim 2.

Accordingly, the applicants respectfully submit that neither *Gordon* nor *Schumacher*, alone or in combination, disclose, teach, or suggest, a miscarriage kit including “a specimen pan is configured to fit inside the rim of a toilet and further includes an upper rim configured to allow the upper rim to rest atop the toilet rim, wherein the specimen pan is configured to receive human tissue from a miscarriage,” as recited by claim 2, as amended. Claims 3-9, 32, and 34 depend from, and incorporate all the limitations of, claim 2. Accordingly, reconsideration and withdrawal of the rejection of claim 3-9 are respectfully requested. Allowance of claims 3-9, 32, and 34 is thus respectfully requested.

CONCLUSION

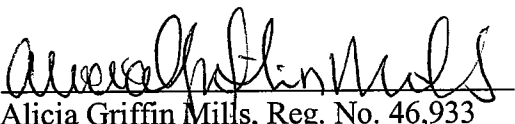
In light of the above, it is respectfully submitted that the present application is in condition for allowance. Reconsideration of the present application and a favorable response are respectfully requested. If the Examiner feels an interview would facilitate prosecution of the present application, the applicants' representative is available for such interview.

This response is being submitted on or before June 8, 2007, with the required fee of \$325.00 for a two-month extension of time fee and extra claims fee, making this a timely response. It is believe that no additional fees are due in connection with this filing. However, the Commissioner is authorized to charge any additional fees, including extension fees or other relief which may be required, or credit any overpayment and notify us of same, to Deposit Account No. 04-1420.

Respectfully submitted,

DORSEY & WHITNEY LLP
Customer Number 25763

Date: June 8, 2007

By: 
Alicia Griffin Mills, Reg. No. 46,933
(612) 492-6514

